The Solicitors' Journal

Vol. 94 April 29, 1950 No. 17

CURRENT TOPICS

Theory and Practice of Law

LECTURING on "Professional Standards" to Australian law students, Chief Justice Sir JOHN LATHAM had many wise things to say about legal practice (*Law Institute Journal* for 1st March, 1950, at p. 43). "By far the greatest proportion of legal work," he said, "is done in solicitors' offices; by far the greatest proportion of the work of lawyers is not concerned with litigation in the courts. . . . Every lawyer, whether he be a barrister or a solicitor, ought to be able to understand ordinary accounts." On the subject of amalgamation of the two branches of the profession Sir John said: "The existence of a separate Bar makes specialisation possible in a manner which would not otherwise be possible. . . . There are many men who are highly competent in one branch who would be relatively incompetent in the other branch." Illustrating the harm that may be done by the abuse of legal proceedings, he described how, when there was a large Chinese population in Melbourne, a Chinaman who quarrelled with another would sue him for money lent and bring eight witnesses to prove it. The wilier defendant, instead of attempting to prove that it had not been lent, would bring ten or twelve witnesses to prove that it had been repaid. The magistrate, however, usually made up his mind on the knowledge he had of the parties themselves. "Of course," said Sir John, "if one looked at such a case as through a transcript—darkly—in the High Court, I do not know where we would get."

The Kissing of Hands: Validity of Statutory Instruments

THERE is an apparent conflict between the statement in Halsbury's Laws of England and the opinion of the "highest authorities" consulted by the PRIME MINISTER, according to his reply to a question raised by Sir HERBERT WILLIAMS in the Commons on 18th April, as to whether S.I. 1950 No. 297 was signed by the Minister of National Insurance (Dr. EDITH SUMMERSKILL) before her acceptance to that office. Mr. ATTLEE said that the ceremony of kissing of hands, to which he assumed that Sir Herbert referred, was the traditional manner in which the subject returned thanks for and acknowledged at His Majesty's convenience an honour or favour conferred upon him. He said that acceptance in fact took place before the signing of the S.I. Sir Herbert Williams then referred to Halsbury's Laws of England, and Mr. Attlee replied that Sir Herbert was confusing the kissing of hands with what happened in certain offices when there was the handing over of seals.

Licensing: Conversion into Dwellings

CIRCULAR 48/50, issued by the Ministry of Health on 17th April, refers to s. 43 (3) of the Housing Act, 1949, by virtue of which the sale of a building converted under a building licence into a house or houses and the letting of houses so provided are subject to control under s. 7 of the Building Materials and Housing Act, 1945, as amended by s. 43 of the Act of 1949, in the same way as the sale or letting of new houses constructed under a building licence. The

CONTENTS

	PAGE
CURRENT TOPICS:	
Theory and Practice of Law	259
The Kissing of Hands: Validity of Statutory Instruments	259
Licensing: Conversion into Dwellings	259
Bankruptcy Fees	260
Reform of Rent Control	260
Solicitors as Insurance Agents	260
Office Accommodation and Building Licences	260
The Law Society's Provincial Meeting for 1950	260
Institute of Advanced Legal Studies	260
ANIMALS AND CHARITY	262
COSTS:	
Probate—I	263
A CONVEYANCER'S DIARY:	
Devolution of Realty upon Death	264
LANDLORD AND TENANT NOTEBOOK:	
Possession by Wife Again	265
HERE AND THERE	267
SOCIETIES	267
CORRESPONDENCE	268
BOOKS RECEIVED	268
NOTES OF CASES:	
Fowler *v.* Bratt *(Estate Agent: Commission)*	269
Griffin *v.* London Transport Executive *("Factory": Tramway Depot)*	271
Korner *v.* Witkowitzer *(Procedure: Service out of Jurisdiction)*	269
Pearson *v.* Lambeth Borough Council *(Public Convenience: Invitee or Licensee)*	269
Reed (Dennis), Ltd. *v.* Goody and Another *(Estate Agent: Commission)*	270
Smethwick *v.* National Coal Board *(Factory: Unfenced Machine: Unexplained Death of Workman)*	270
West Mersea Urban District Council *v.* Fraser *(Water Undertakers: Supply of Water to House-Boat)*	271
SURVEY OF THE WEEK:	
House of Lords	271
House of Commons	272
Statutory Instruments	273
NOTES AND NEWS	273
OBITUARY	274

circular states that it has been decided that in future licences authorising the conversion of any buildings into houses or flats should be issued subject to a condition fixing the maximum rent at which the dwellings to be provided may be let and, where justified by the licensee's interest in the property, to a maximum selling price. A rental fixed in this way is taken outside the scope of review by a rent tribunal by s. 1 (7) (*b*) of the Landlord and Tenant (Rent Control) Act, 1949. It must be left to the local authority to decide what is, in their judgment, a reasonable rent and selling price for the property, having regard to all the relevant circumstances, including the cost of conversion and repair and any development charge, and to prevailing rents of comparable properties in the neighbourhood. The form of condition set out in circular 50/46, para. 6, suitably adapted, should be used. The Minister takes the opportunity of reminding authorities that any other condition purporting to control or restrict the freedom of letting or sale of property constructed or converted under licence may prove to be unenforceable either under the Acts or the Defence Regulations.

Bankruptcy Fees

THE Bankruptcy Fees (Amendment) Order, 1950 (S.I. 1950 No. 602), which comes into operation on 1st May, clarifies the wording of Fee No. 10 in Table A of the First Schedule to the Bankruptcy Fees Order, 1930, as amended, and of Fee No. 2 in Table C of that schedule. Fees payable under Fees Nos. 4 and 5 of Table C (relating to duties performed away from the court office by officers of the court) are increased. The Bankruptcy Fees (Amendment No. 1) Order, 1932, which prescribed the now superseded Fee No. 10 in Table A, is revoked.

Reform of Rent Control

MR. A. G. ANDERSON, of Messrs. Roberts, Riley & Co., solicitors, of Manchester, Chairman of the Rent Committee of the National Federation of Property Owners, in a letter, dated 3rd April, to Mr. T. G. LUND, Secretary of The Law Society, drew attention to the "Current Topic" on "Reform of Rent Restrictions" in our issue of 18th March, and asked whether it was possible for some communication to be made by The Law Society to all the solicitor-members of Parliament in regard to the reform of rent restrictions. He referred to the fact that nothing had been done to supplement the major recommendation in the Ridley Report of 1945 that the statutes on the subject be consolidated. Mr. H. H. TURNER, Under-Secretary of the Society, in his reply of 4th April, recalled the action taken in January, 1949, when Sir ALAN GILLETT, then President, wrote to *The Times* on the subject and a similar letter was sent to the Minister of Health, and solicitor-members of the House were informed. "It may well be," wrote Mr. Turner, "that the time is now ripe for a further letter to the solicitor-members of the House of Commons, as many of the existing members were not, of course, members of the previous Parliament." The Society, he wrote, had taken up the matter with the Statute Law Committee. He also referred to the Minister of Health's Parliamentary reply on 9th March that he could hold out no prospect of early legislation to amend the Rent Restrictions Acts.

Solicitors as Insurance Agents

AT the 31st Annual General Meeting of the Corporation of Insurance Agents on 17th April, 1950, the chairman, Mr. J. H. W. SHAW, said that the objects of the corporation were to elevate the status of members, to safeguard their interests and to procure their general efficiency and proper professional conduct. He added that their members were largely drawn from the professional classes and it would be presumptuous on the part of the council to attempt to elevate their status in any respect other than as insurance agents. He announced that, when approached, The Law Society agreed that their members might join the corporation, and the council had been happy to elect a number of practising solicitors as fellows. He numbered among the advantages of membership that confidential circulars were issued to members when the occasion warranted, the bulletin issued in alternate months contained a wealth of insurance data selected to suit the requirements of members, and the council had given expert advice to numerous members.

Office Accommodation and Building Licences

A LITTLE good news is better than none, and the latest building licence concession announced by the Council of The Law Society in the April issue of the *Law Society's Gazette* will give some relief to a dark situation as regards office accommodation for solicitors. This has for some time past been the subject of representations by the Council to the Ministry of Works. It has now been intimated that the Ministry will be prepared to take into account representations that the Council may wish to make in respect of applications by solicitors for the grant of a building licence for additional office accommodation in any part of the country, previous applications having been confined to war-damaged premises in the City of London and adjacent boroughs. Any member of the Society who may wish to receive assistance in this connection should communicate full details to the Secretary.

The Law Society's Provincial Meeting for 1950

THE "busman's holiday" for solicitors, in the shape of the Provincial Meeting arranged by The Law Society for 25th to 29th September, 1950, is to take place at Torquay, and "a full and interesting entertainment," according to The Law Society's circular on the subject, has been arranged in conjunction with the Devon and Exeter Law Society and the Corporation of Torquay. The usual attractive mixture of *utile cum dulci* will be enhanced this year by the holding of a sailing race against local yachtsmen. No doubt there will be a spate of local jests about lawyers sailing near the wind, but we shall wait and see whether lawyers or laymen will prevail in this contest. A dance at the Palace Hotel at the invitation of the mayor and the Corporation of Torquay, the final of the Annual Golf Competition and an afternoon cruise up the River Dart, with an alternative coach trip over the moors, are to be further pleasant features of the meeting. Discussions will take place on the work of the committees of the Council dealing with scale, professional purposes, legal aid, salaried solicitors and the constitution of the Society. The programme affords every augury of a highly successful meeting.

Institute of Advanced Legal Studies

THE second annual report of the Institute of Advanced Legal Studies states that the institute's library has received a great many gifts, for which the committee of management tender their sincere thanks. One of the most gratifying aspects of the institute's development has been the interest and generosity which have prompted so many offers of valuable books, periodicals and pamphlets to the institute. A very useful publication issued by the library during the year is a "Survey of Legal Periodicals Held in British Libraries." This gives details of about 450 legal periodicals in fifty-four London and provincial libraries.

ANIMALS AND CHARITY

THERE is something about the law of animals which makes its details stick more firmly in the memory than do those of many other legal topics. Who that has studied the common law does not recall, for instance, the "one-bite" *scienter* rule in negligence, the liberty accorded to the domestic cat to indulge her *wanderlust* (*Buckle* v. *Holmes* [1926] 2 K.B. 125), the interesting game of chance which may decide the ownership of a swarm of bees (*Quantrill* v. *Spragge* (1907), 71 J.P. Jo. 425), and the decisions which have conferred on a camel in a zoo the exalted status of an animal *mansuetae naturae* (*McQuaker* v. *Goddard* [1940] 1 K.B. 687) and on pigs the generic description of cattle (*Phillips* v. *Bourne* [1947] K.B. 533)?

Not only does our law reserve some of its nicest paradoxes for the affairs of our supposedly dumb companions. Parliament has gone far (though, as some think, not far enough) in the enactment of measures designed to prevent cruelty to animals, and Tucker, L.J., was merely stating the obvious when he observed: "We are, as a race, peculiarly solicitous for the welfare of animals" (*I.R.C.* v. *National Anti-Vivisection Society* [1946] K.B. 185). But his lordship was considering the terrifying problem of the fourth head of legal charity, and approaching it, as he confessed, for the first time.

Animals can indeed, not to phrase it too meticulously, form the object of a valid charitable gift. The "dogs' home" is the charitable destination which springs most readily to the tongues of those who talk flippantly of cutting off their families. And a gift to a home for lost dogs was held in *Re Douglas* (1887), 35 Ch. D. 472, to be a good charitable gift.

But we should beware of regarding the animals themselves as the direct beneficiaries in this type of case in the sense that the benefit to them induces the charitable quality in the gift. In a widely quoted *dictum* of FitzGibbon, L.J. (*Re Cranston* [1898] 1 Ir.R. 431, 446), to the effect that a gift would be charitable if it benefited "an appreciably important class of our fellow creatures (including, under decided cases, animals)," the parenthesis is to be read as developed by Swinfen Eady, L.J., in *Re Wedgwood* [1915] 1 Ch. 113: "A gift for the benefit and protection of animals tends to promote and encourage kindness towards them, to discourage cruelty, and to ameliorate the condition of the brute creation, and thus to stimulate humane and generous sentiments in man towards the lower animals, and by these means promote feelings of humanity and morality generally, repress brutality and thus elevate the human race." Animals are thus only vicariously an object of charity. Like the punishment which hurts (it is said) the chastiser more than the chastised, true charity to animals edifies the public which sanctions it, and also doubtless the law which exempts it from the pains of perpetuity and the mayhem of taxation.

Thus it is that not every gift for the benefit of animals is charitable in law. A use "to feed sparrows" was rejected, according to the report in *A.-G.* v. *Whorwood* (1750), 1 Ves. Sen. 534. From the earlier cases Lord Hanworth, M.R., in *Re Grove-Grady* [1929] 1 Ch. 557, extracts the proposition that if the object be to enhance the condition of animals that are useful to mankind or to secure good treatment for animals, whether useful to mankind or not, or to insure humane conduct towards and treatment of them, whether in respect of a particular subjection to the use of mankind as for food, "or in what is called vivisection," such objects are to be deemed charitable.

In particular Lord Hanworth referred to the decision in *Re Wedgwood, supra*. In this case the Court of Appeal held on the true construction of a will that the residue of the testatrix's estate had been given on a secret trust "for the protection and benefit of animals." The court then heard argument on the question whether this was a valid charitable trust and decided that it was. It was, said Lord Cozens Hardy, M.R., "calculated to promote public morality by checking the innate tendency to cruelty." What the short headnote in the Law Reports does not mention is the particular evidence which was before the court as to the terms of the secret trust. It appeared that, though the testatrix had left the trustee a free hand as to the cases in which he thought animals might be benefited, specific reference had been made in conversation between the testatrix and the trustee to the movement for humane slaughtering and the provision of municipal abattoirs. All the members of the court referred to these two purposes as indicating the scope of the testatrix's intentions.

Re Wedgwood was distinguished and confined within its proper limits as a trust for the public benefit in the later case of *Re Grove-Grady, supra*. Romer, J., had treated the earlier decision as conclusive of the question before him, but decisions upon charity questions are first and foremost decisions upon the construction of a particular instrument. The will of Mrs. Grove-Grady provided for the establishment of a refuge for the preservation of "all animals, birds or other creatures not human," which were to be kept safe from molestation or destruction by man. Russell, L.J., in the Court of Appeal, pointed out that this was not a trust to ensure absence or diminution of pain or cruelty in the destruction of animal life. Indeed, no animal in the refuge could strictly be destroyed by man no matter how necessary that destruction might be. Lord Hanworth said: "It is not a sanctuary for any animal of a timid nature whose species is dying out; nor is it a sanctuary for birds which have almost entirely left our shores and may be attracted once more by a safe seclusion to nest and rear their young . . . The one characteristic of the refuge is that it is free from the molestation of man, while all the fauna within it are to be free to molest and harry one another." The majority of the court (Lawrence, L.J., dissenting) found in this provision no elevating lesson to mankind—no necessary benefit to the public. The gift was not charitable.

Lord Hanworth referred in the course of his judgment in *Re Grove-Grady* to the question of vivisection, and thereby hangs a tale. At the time at which Lord Hanworth spoke (1929) anti-vivisection societies had been held charitable (*Re Foveaux* [1895] 2 Ch. 501), though Russell, L.J., doubted, in *Re Grove-Grady*, whether *Re Foveaux* would be followed in the light of later knowledge of the benefits accruing to mankind from vivisection. This doubt, as is well known, was, in 1947, proved to be justified. The later knowledge on the subject was, on an income tax appeal by the National Anti-Vivisection Society, put in evidence before the Special Commissioners; and ultimately the House of Lords ([1948] A.C. 31) held that from that evidence the proper inference was that anti-vivisectionist objects were not, on balance, for the public benefit, and therefore not charitable in law.

The latest reported decision on gifts for the benefit of animals is *Re Moss* (1949), 93 SOL. J. 164, in which the objects of the testatrix's compassion were of the feline species. She left a legacy and her residuary estate to a friend, for the friend to use at her discretion "for her work for the welfare of cats and kittens needing care and attention." There was evidence that the friend's work, which she had carried

on for many years, consisted of the relief of cats and kittens which were stray or unwanted. If the cats were badly ill or hurt she put them to sleep; if healthy, she endeavoured to find them homes. Romer, J., directing himself by reference to *Re Grove-Grady* and *I.R.C.* v. *National Anti-Vivisection Society*, that there must be some benefit to the community if the trust was to be regarded as charitable and that it was for the court to determine in each case whether such benefit must necessarily result, held that the gift in the case before him "passed the test with honours." It seemed to his lordship that the care of and consideration for animals which through old age or sickness or otherwise were unable to care for themselves were manifestations of the finer side of human nature. That was perhaps more especially so with domestic animals.

Re Moss is equally timely for its implications as for the actual decision. For Romer, J., laid some stress on the requirement in the gift that it was to be for the welfare of cats *needing care and attention*. It was not merely a gift to be used at discretion for the welfare of cats and kittens. A gift to prevent cruelty in relation to cats would be good as having an elevating effect on mankind. His lordship saw no difference between that and a gift to alleviate distress among cats. This seems to emphasise once more that something more is needed in the constitution of a valid charitable gift or trust for animals than benefit to the animals themselves. Such gifts are drawn into the ambit of legal charity only by the embrace of the fourth category—the residual category of purposes which are within the spirit and intendment of the preamble to the Elizabethan Statute and in regard to which benefit to the human community requires in each case affirmative proof.

J. F. J.

Costs

PROBATE—I

SOME knowledge of the historical background to probate practice is necessary for a proper understanding of the rules and procedure as to costs in connection with this class of work, and, before turning to a consideration of probate costs, we will glance briefly at this background.

Prior to the middle of the last century, probate matters were dealt with by the ecclesiastical courts, and the practice was in the hands of a body of persons known as proctors. In 1857 the Court of Probate Act was passed, which, as from 11th January, 1858, vested in the Court of Probate the authority hitherto held by the ecclesiastical courts. The Supreme Court of Judicature Act, 1873, united the principal courts in England into what is now known as the Supreme Court of Judicature, and, as from the 1st November, 1875, the Court of Probate became one of the divisions of the High Court. There have been further statutory enactments since that date, and the business of the Probate Division of the Supreme Court of Judicature is now defined by the Supreme Court of Judicature (Consolidation) Act, 1925. The court itself deals only with that part of probate business known as contentious probate business, and the granting of probate and letters of administration in common form is dealt with in the Principal and District Registries.

The terms "contentious" and "non-contentious" business crop up frequently in the course of probate work, and non-contentious business is defined by s. 175 of the 1925 Act as being business in obtaining probate and letters of administration where there is no contention as to the right thereto, including the passing of probates and administrations through the High Court where the contest has been terminated, and all business of a non-contentious nature in matters of testacy and intestacy not being proceedings in any action, including the business of lodging caveats against the grant of probate or administration.

The 1925 Act gave power to the President of the Probate Division of the High Court, with the concurrence of others, to make rules and orders for regulating the practice and procedure of the court so far as non-contentious or common form business is concerned, and the effect of this is that the Rules of the Supreme Court do not apply to such business. This is an important point so far as costs are concerned, since it means that, although R.S.C., Ord. 65 and Appendix N, apply so far as contentious business is concerned, those regulations do not apply to non-contentious probate work, and one has to turn elsewhere for the appropriate fees and allowances.

It may be regarded as somewhat odd that, with the changes that have taken place in regard to the practice of the courts in relation to probate work, and the various amendments and additions to the original rules and orders that have been made, the authority as to the fees to be charged by solicitors for non-contentious probate work has remained unchanged for nearly eighty years. In the result, the fees to be charged by solicitors for non-contentious probate work are regulated by the Table of Fees fixed by the Rt. Hon. Sir James Hannen, the judge of the Court of Probate, and dated 5th February, 1874. Authority is given by r. 110 of the Principal Registry Rules to increase these fees by the 50 per cent. authorised by R.S.C., Ord. 65, r. 10, but beyond this the fees, as we have stated, remain the same as they did when fixed nearly eighty years ago.

This fact has one curious effect. At the time when the fees were fixed in 1874 a grant of probate or letters of administration could not be obtained in respect of real property, and it was not until the passing of the Land Transfer Act, 1897, that real estate could be included in a grant. The result of this is that the fees fixed in 1874, some of which are scale charges based on the value of the estate, were calculated only on the gross value of the *personal* estate of the deceased, for the very good reason that no real estate was included in the grant. Now, although the grant may, since 1897, include real estate, the scale fees in respect of non-contentious probate work are still based only on the gross value of the personal estate, and no provision is made for remuneration in respect of any real estate which may be included in the grant.

In point of fact, if a non-contentious probate bill of costs is taxed in the Registry, it is understood that the Registrar will normally allow an additional fee to cover the work done in respect of the real estate included in the grant, and in determining the amount of the additional fee to be allowed some regard may well be paid to the amount which would have been chargeable if the table of fees of 1874 had been based on the value of the real as well as the personal estate. The fact remains, however, that in calculating the amount of the solicitor's scale fee in respect of obtaining a grant of probate or letters of administration, the amount of the real estate should be left out of the calculations. It is customary,

however, to include a suitable fee and we will revert to this point later when considering the fees allowed.

The Table of Fees, 1874, merely provides allowances in respect of the work customarily encountered in probate work, and, as in other scales of fees, some items appear to be unprovided for. Indeed, at the end of the table is a note to the effect that solicitors are not entitled to any costs in addition to those allowed by the foregoing table in respect of the non-contentious business comprised therein, but the note then goes on to make provision for certain work unprovided for in the table, as, for instance, "instructions for any instrument prepared by them" and "perusing every original document which it is necessary to peruse as instructions." The former is allowed at 6s. 8d. and the latter at 4d. per folio.

In this respect it is interesting to note that the folio in that note is stated to be seventy-two words in length, and the folio is the same length where it is being calculated for the purpose of making copies of documents not provided for in the main table of fees. Yet in the main table of fees there are some instances where the folio is to be taken at ninety words, whilst in the Supreme Court (Non-Contentious Probate) Fee Order, 1928, a folio is stated to mean a folio of ninety words. Thus, in the table of 1874 a scale fee is provided for drawing and engrossing the affidavit for the Inland Revenue and attending on the party to be sworn, the scale fee, as we have noticed before, depending on the gross value of the personal estate, but where the affidavit exceeds five folios in length, then for every additional folio of seventy-two words there is allowed 1s. 4d. to include engrossing. On the other hand, for engrossing and copying an original will for the purpose of probate, or for perusing a will for the purpose of ordering extracts therefrom or for collating an extract with the original, the fee is based on a folio of ninety words in length. It will be seen, however, that the fees which are dependent on a folio of ninety words in length are now more or less redundant, since a will is not now engrossed and copied for the purpose of probate because photographic copies are always made; whilst if copies of or extracts from a will are required, then again photographic copies are made.

The Table of Fees of 1874, it will be found, relates only to the actual business of obtaining a grant of probate or letters of administration, but in practice a good deal more is normally done than this in the way of registering the grant or letters with the companies in which the funds of the deceased person are invested and in obtaining a transfer of the funds into the names of the beneficiaries. This work does not strictly come within the definition of non-contentious probate business, and it should be charged for as other non-contentious business under Sched. II of the General Order, 1882, made pursuant to the Solicitors Remuneration Act, 1881. A different scale will thus operate when once the grant of probate or letters of administration has been obtained, for whilst it will be found that such attendances as are chargeable in respect of non-contentious probate work are allowed at 6s. 8d., when the grant is obtained and the remuneration of the solicitor is made by reference to Sched. II, *supra*, then attendances will be allowed at 10s. 0d.

It will be useful now to glance briefly at the work for which remuneration is provided by the Table of Fees, 1874. As we have noticed it is confined principally to the obtaining of the grant, and the first item in relation thereto is that of "instructions." Now, no fee is allowed under the scale for instructions to act, although as is stated above a fee of 4d. per folio is allowed at the end of the table of fees for perusing documents as instructions, but the position of this fee in the scale in relation to other fees suggests that it is allowable only as instructions for drawing any original instrument in connection with the work of obtaining a grant of probate or letters of administration. Be that as it may, it is customary for a fee for instructions to act to be charged, and this will vary according to the number of attendances and the complexity of the matter. The next step is the preparation of the executors' or administrators' oath and the Inland Revenue affidavit. For this a scale fee is allowed in both cases, the amount of the fee varying with the value of the gross personal estate. Where, as they normally do, the Inland Revenue affidavit and the schedules thereto exceed five folios in length (a folio in this instance being seventy-two words) then in addition to the scale fee a charge of 1s. 4d. per folio may be made in respect of each folio beyond five. Here again, nothing is said about a fee for instructions, although quite frequently a good deal of work has to be done in gathering together the material on which to prepare the Inland Revenue affidavit. It is customary, therefore, to charge a fee for instructions for the schedules to the affidavit consistent with the amount of work done.

The rest of the work done in lodging the papers, paying the court fees and estate duty and obtaining the grant is covered by the scale fee laid down in the tables under the heading "Probate under Seal" or "Letters of Administration," "Extracting" and "Clerk's Fee," the amount of these fees again being dependent on the gross value of the personal estate. If the estate includes real property an additional fee must be charged to cover the work done in connection with that. Details may be charged, but in any case the total amount charged should bear some relationship to the scale fee which would have been chargeable if the table of fees had been based on the real as well as the personal estate.

In our next article we will consider the rules and practice with regard to contentious probate work.

J.L.R.R.

A Conveyancer's Diary

DEVOLUTION OF REALTY UPON DEATH

In the article on the decision in *Re Hodge* [1940] Ch. 260, which appeared in this "Diary" a few weeks ago (see p. 204, *ante*), I prefaced my examination of that case with a few general remarks intended to serve as a historical background to s. 36 of the Administration of Estates Act, 1925, the provision which deals with the operation of assents in regard to realty in the modern law regulating the devolution of property on death. These remarks have elicited two letters from correspondents. The first asks whether there is any specific authority for the statement that before 1926 an administrator, whatever the nature of the grant made in his favour, could only transfer realty by means of a conveyance. The other suggests that the position would have been made clearer if reference had been made to s. 1 of the Land Transfer Act, 1897, and goes on to say, in reference to my statement that before 1926 a devisee derived title under the will, and that the devised property vested in the devisee upon the testator's death, subject only to the powers of the personal representative to deal with that property in due course of administration, that this correspondent had always understood

that the personal representative before 1926 had more than these powers over the devised property and that he could, in fact, transfer it to the devisee by assenting to the devise.

I entirely agree that reference to the Land Transfer Act, 1897, is necessary to elucidate the position of the personal representative in regard to realty during the period between 1897 and 1926, but I think that the rest of this correspondent's observations show signs of a misconception of the purpose for which the assent was designed when it was originally recognised by the common law, a purpose which, in my view, remained basically unchanged until 1926, for all the extension of the field within which the assent operated by the minor revolution effected in this branch of the law by the Act of 1897.

The portions of this Act relevant to the immediate purpose are as follows: Section 1 (1) provided that "where real estate is vested in any person without a right in any other person to take by survivorship it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives . . . as if it were a chattel real vesting in them. . . "; by s. 2 (1), the personal representatives were to hold the real estate so vested in them, subject to similar powers over it as had theretofore existed in respect of personal estate, as trustees for the persons by law beneficially entitled thereto; and by s. 3 (1) it was provided that "at any time after the death of the owner of any land, his personal representatives may assent to any devise contained in his will, or may convey the land to any person entitled as heir, devisee or otherwise. . . ."

Broadly speaking, therefore, this Act equated the position of freeholds (it did not affect copyholds or lands held by customary tenure: s. 1 (4)) with that of leaseholds for the purpose of availability for the payment of the deceased's debts, etc., and in order to effect this purpose it was necessary to put the personal representative in temporary possession or control of freeholds, as he had always been in relation to leaseholds. Before 1898, although freehold land could in certain circumstances be made available for the payment of debts, it never came under the control, even temporarily, of the personal representative, whether executor or administrator: it passed directly to the devisee or heir of the deceased, and the creditor's rights in relation thereto were either to sue the devisee or heir in covenant in the case of assets by descent (i.e., in cases where the deceased had made his devisee or heir liable for specialty debts), or to commence an administration action in Chancery, whereupon the deceased's freeholds could be resorted to for payment of debts under the Administration of Estates Act, 1833. In neither case, it is important to note, did the deceased's freeholds pass into, or through, the hands of his personal representatives, and there was thus clearly no need, before 1898, for any assent or conveyance on the part of the personal representative either (*a*) to transfer the freeholds (or, as we should say now, the legal estate) to the person who became entitled thereto under the will or the intestacy (since such person became invested with the legal estate immediately on the death), or (*b*) to mark the discharge of the freeholds from the powers of sale, etc., of the personal representative (since, as has been seen, no such powers existed before 1898). This was the position both in cases of testate and in cases of intestate succession. On the other hand, leasehold property had always been available for payment of debts, being treated for this purpose on the same footing as all other personal property, and so devolved upon the personal representative on the death of the deceased, with the consequence that, when the representative found that he did not require such property for the purposes of administration, he had to signify to the person entitled to that property that it was discharged from the powers he had previously possessed over it. This he signified by assenting to the property vesting in the beneficiary, the assent being made either in writing or by conduct (see *Kemp* v. *Inland Revenue Commissioners* [1905] 1 K.B. 581, 585).

I have used the expression "personal representative," but in fact, for historical reasons not explicable on any logical grounds, the making of assents was always confined to executors, and administrators (whether with the will annexed or in any other case) were never, apparently, required to assent. The position in regard to realty after 1897, therefore, was that an executor was required to assent, by s. 1 of the Act of 1897, to the vesting of freeholds in the beneficiary in the same manner as he would have done before 1898 in respect of leaseholds, but an administrator, having never been required to make an assent in respect of leaseholds, was not required by the Act to do so in respect of freeholds, s. 1 (1) of the Act making it clear that freeholds were, in the words applied to later property legislation, assimilated to leaseholds for the limited purposes, and to the limited extent, which the Act had in view. It is, therefore, a mistake to think that personal representatives in general had the power to transfer property by assent after 1898; the administrator had no such powers, and the executor's power in this regard was not one which can now be called a power of transfer without qualification or explanation. I hope the further explanation now given has helped to clarify this question.

As to the other question, whether there is any authority for the statement that an administrator before 1926 could transfer realty only by conveyance, not by assent, I know of no reported case on the subject, but the proposition is implicit in the wording adopted by the draftsman in s. 3 (1) of the Act of 1897 ("or may *convey* the land to any person entitled thereto as heir . . . "), and it can be found stated in the books (see, e.g., Robbins and Maw on the Devolution of Real Estate on Death, 4th (1908) ed., p. 409, and cf. the precedent in the 11th (1923) edition of Key and Elphinstone, at vol. 1, p. 1151).

"A B C"

Landlord and Tenant Notebook

POSSESSION BY WIFE AGAIN

"STATUS" is one of those expressions which it is difficult to define; but it is recognised that, whatever else it may connote, status is essentially something which cannot be got rid of by agreement. Whoever enjoys a particular status may have acquired the rights and undertaken the obligations concerned by agreement; but he cannot so divest himself of the one or extinguish the other. This, I submit, is the clue to the proper understanding of the recent decision in *Middleton* v. *Baldock* [1950] 1 All E.R. 708 (C.A.), the latest of a group in which a landlord of controlled premises, let to a tenant who had ceased but whose wife had not ceased to occupy them, has found himself unable to recover possession. The tenant in such a case enjoys, or at least has, dual status: when the contractual term comes to an end he becomes, if he retains possession, a so-called "statutory tenant" by virtue of the Increase of Rent, etc., Restrictions Act, 1920,

s. 15 (1), and is at the same time invested with and subject to the status conferred or imposed on married persons by the far older established common law. The landlord cannot obtain an order for possession against a statutory or indeed any protected tenant unless he proves either one of the grounds in s. 3 (1) or the First Schedule to the Increase of Rent, etc., (Restrictions) Act, 1933, or that the tenant has given up possession; if by matrimonial law he has wrongfully deserted his wife, he has not given up possession.

The earlier cases had not quite settled the point; this through no fault of their own, but rather because some fortuitous circumstance left some room for argument inviting distinction. In *Brown* v. *Draper* [1944] K.B. 309 (C.A.), the tenant left his wife and some furniture of his in the house; the landlord sued the deserted wife only, but called the husband as a witness to say that he took no interest in the premises. The decision in the appeal against the order which was granted made much of the fact that the husband had not been made a party to the action, with the result that the county court had had no jurisdiction to make an order for possession of controlled premises. The proceedings were "defective for want of parties." Nevertheless the judgment of Lord Greene, M.R., did point out that there were only two ways in which a tenant of such premises could lose protection, namely, those indicated in the concluding sentence of my first paragraph. And a tenant who remained in possession could not, by a mere statement of his intentions and wishes in the witness-box in an action to which he was not a party, confer on the court a jurisdiction of which the statute deprived it. "Unless and until Joseph Draper gives up possession the respondent can only obtain possession as against him by obtaining an order; and the power of the court to make an order is limited by statute."

Taking this to heart, the landlords in *Old Gate Estates, Ltd.* v. *Alexander* (1949), 93 SOL. J. 726, prepared their case by obtaining a written surrender from the husband plus a written revocation of any authority or leave which he had at any time granted to or given to his wife to occupy the flat claimed. What prevented the decision from enjoying the authority it might have possessed was that the unhappy differences were disposed of before the hearing and the husband was then again in personal possession of the premises, plus the fact that, like the husband in the last case, he had not removed his furniture. Two of the judgments delivered in the Court of Appeal very much emphasised the continued presence of the furniture as negativing the giving up of possession; but Denning, L.J., drew attention to the fact that a wife had a very special position in the matrimonial home. "She is not the sub-tenant or licensee of the husband. It is his duty to provide a roof over her head. He is not entitled to tell her to go without seeing that she has a proper place to go to. He is not entitled to turn her out without an order of the court: see *Hutchinson* v. *Hutchinson* [1947] 2 All E.R. 792. Even if she stays there against his will, the house remains within the Rent Acts and the landlord can only obtain possession if the conditions laid down by the Acts are satisfied."

The "Notebook" discussed this aspect of the matter, and observed that it might impose upon county court judges the task of deciding the sometimes delicate question of who had deserted whom, when discussing the above decision on 10th December last (93 SOL. J. 770). And in the new case, *Middleton* v. *Baldock*, it was argued for the landlord not only that Denning, L.J.'s observation had been made *obiter*, but also that it was not right that county court judges, when dealing with possession cases, should have to be involved in a trial of matrimonial difficulties.

The facts of this case were that actions for possession were brought against a husband and a wife and were not consolidated (though the Court of Appeal thought that they should have been). The husband had held a contractual tenancy which had come to an end and had deserted the wife and left the house, where some of his furniture remained. In the action brought against him, in which the plaintiff neither alleged nor proved any recognised "ground for possession," he signed a document stating that he admitted the plaintiff's title, her right to immediate possession, and a monetary claim, and that he offered to give possession forthwith, on the strength of which the county court judge made an order in the plaintiff's favour. The action against the wife followed: she claimed to be rightly in possession as the wife of the tenant, but the judge came to the conclusion that, an order having been made against the husband, she could have no right to remain in possession (the learned Master of the Rolls approved the reasoning but considered one premise false). The husband being "in no mood" to appeal, the appellant wife asked to be added as a defendant in the action against him and the Court of Appeal granted her application and thus became seised of the substance of the dispute. All that remained was to consider whether the order against the husband was correctly made, guidance being obtained from the two earlier authorities I have mentioned. It was held that the true *ratio decidendi* of *Brown* v. *Draper* was that the husband in that case had done nothing which conferred jurisdiction to make an order, and that this was also the principle which underlay the decision in *Old Gate Estates, Ltd.* v. *Alexander* and which must be applied in the present case.

It so happens that in each of these three cases the husband had left not only his wife but some furniture on the premises, but the emphasis is now on the deserted wife's rights as a wife and one can be sure that the removal of furniture would not improve a landlord's chances. In *Middleton* v. *Baldock* there is only one reference to the furniture in one of the three judgments, and that only in the part setting out the facts. It remains to be seen whether a constructively deserting wife, or one in a "drifted apart" situation, could shelter herself behind furniture or other inanimate matter belonging to the husband; if the view that status is *all* that matters is correct, she could not; but, strange though it may seem, a passage in Bucknill, L.J.'s judgment in *Old Gate Estates, Ltd.* v. *Alexander* supports the proposition that she could.

The court did not think the difficulty of having to decide matrimonial disputes in possession cases a serious one. After all, county court judges, even those who have not acted as Commissioners in the Divorce Division, have experience of proceedings under s. 17 of the Married Women's Property Act, 1882, the remedy considered in *Hutchinson* v. *Hutchinson*. For that matter, lay justices adjudicating in summonses taken out under the Small Tenements Recovery Act, 1837, might conceivably have to interpret a will; and one modest Staffordshire bench which, in *Dudley and District Benefit Building Society* v. *Gordon* [1929] 2 K.B. 105, declined jurisdiction on the ground that knotty problems were involved which could more suitably be dealt with by a higher court was told that it had no option in the matter. R. B.

Mr. N. Hershman, solicitor, of Clement's Inn, London, was married on 16th April to Miss Evelyn Levy, daughter of Mr. Richard Levy, K.C.

Mr. Sydney Wooderson, solicitor, of Mark Lane, E.C.3, holder of the world half-mile record, was married on 15th April to Miss Pamela Willcocks.

HERE AND THERE

REWARD FOR INVENTION

THE Royal Commission on Awards to Inventors (Cohen, L.J., in command) will shortly take to the sea and, oddly enough, the worse the weather the better, for their business on the billows is to assess the *quantum meruit* of the begetter of a stabilising device for vessels. All they ask, therefore, is a tall ship and a sufficiently rough sea to rock her by. The *Falaise* has been provided to meet the first need and the envious siege of watery Neptune can doubtless be relied on to oblige in respect of the second. It is said that during the test of a similar device some years ago, the machinery was inadvertently put into reverse, producing an accentuation of the rolls so violent that the muzzles of the ship's guns were dipping into the water. The impetus given to patriotic ingenuity by the late hostilities has provided sufficient work for the Commission but the broken-backed taxpayer will be happy to be assured that, in the opinion of those professionally concerned in the cases, the Commission has resisted, with outstanding fortitude, the temptation to make any extravagant estimate of the recompenses due to claimants. Indeed, its known good husbandry has, it is said, often induced the Ministries concerned, in cases of particular merit, to offer a good deal more than, in the light of experience, might have been expected if the matter had been carried further.

KEN WOOD

IN the middle of May Ken Wood House at Hampstead will be opened to the public again under the name of the "Iveagh Bequest, Kenwood." (The change conforms with a stipulation in the trust deed of 1925 whereby the Earl of Iveagh conveyed it to the nation.) Of late we have become so accustomed to stately homes, complete with owner, being thrown open to public inspection for anything from 2s. 6d. to 5s. that people may well notice a certain chill about this untenanted abode haunted only by a legal memory. My own pre-war recollections are that the grounds are stately and pleasant but that the house was itself somewhat gloomy and forbidding. Still, there is more than the house to draw you up to Hampstead: £200,000 worth of paintings have just been replaced there, Gainsboroughs, Romneys, Rembrandts, Reynolds, taken out of store at the National Portrait Gallery. The house, which narrowly escaped attack in the Gordon Riots, yet more narrowly escaped destruction when it was bomb-blasted in the war. Now the Lord Chancellor is to perform the reopening ceremony although (be it said with all due deference) it would, strictly speaking, be more appropriate for Lord Goddard to fling open the door, since he is the successor in title and office of the figure whose memory makes the house memorable, Lord Chief Justice Mansfield. Before his time it had passed through the hands of the Duke of Argyll, of "one Dale, an upholsterer, who bought it out of the Bubble" (viz., the South Sea Bubble) and of Lord Bute. William Murray (as he then was) was Attorney-General when he purchased it in 1755. He enlarged and new-fronted it in the classical style to the designs of Robert Adam; he employed Zucchi to decorate the library with paintings, which earned general admiration; he plunged enthusiastically into landscape gardening and some of the cedars are said to have been planted with his own hand. Here he died on 20th March, 1793, in his eighty-ninth year. Between the Gordon Riots and the '39 war the most imminent danger that threatened the estate occurred in 1914, just before the earlier war, when the then Earl of Mansfield proposed to sell the estate for building development for £550,000; the contract had in fact actually been prepared. There was an immediate public outcry and the ensuing struggle lasted over a period of ten years; it was largely owing to the generosity of Lord Iveagh that the battle was finally won. In 1924 a scheme was agreed to and in 1925 King George V formally opened the Park. So the Chief Justice's memory stays green.

SMOKE WITH FIRE

JUST in case, amid more conventional news items, you missed this one, the scene is the County Court at Penzance. A witness is giving evidence. Slowly a blue haze is seen to surround his head. Registrar: "Are you smoking?" Witness: "No, sir." Registrar: "Then your head is on fire." Witness removes a piece of burning gas mantle from his hair and is given leave to stand further away from the gas bracket. There is a faint echo of the late Tommy Handley about the scene—or would be were it not for the outstanding quality of British phlegm and the fine imperturbable traditions of British justice. No bomb-conscious diving under the furniture; no operatic inrush of helmeted firemen; not even an impulsive outpouring of the court waterbottle. Incidentally, it is interesting to note that since Walter Raleigh's first alarming pipe the English mind recognises only two alternative explanations to the observed phenomena—either you are smoking or you are on fire. In either event, no smoke without a fire; but in Celtic Cornwall, where mystery and the supernatural still brood among the haunted rocks, one would have expected at least a cursory examination of the possibilities of psychic phenomenon or even of spontaneous combustion (*vide* "Bleak House," c. 32), but I suppose these are matters of which the court will not take judicial notice. Incidentally a High Court judge once set himself on fire with an electric fire under his desk. But even then, dignity was preserved.

RICHARD ROE.

SOCIETIES

The annual meeting and luncheon of the WAKEFIELD INCORPORATED LAW SOCIETY was held at Wakefield on the 17th April, when the following officers were appointed: President, Mr. J. L. J. Burton, LL.M.; Vice-Presidents, Mr. W. S. des Forges, Town Clerk of Wakefield, and Mr. G. L. Oliver, of Castleford; Treasurer, Mr. S. H. B. Gill; Secretary, Mr. C. E. Coles; and a committee consisting of nine members.

The annual dinner of the PRESTON LAW DEBATING SOCIETY, over which the President (Mr. J. Dewhurst, J.P.) presided, was attended by, among others, Mr. J. M. Worthington, J.P., Registrar of the Chancery of the County Palatine of Lancaster, Mr. W. Blackhurst, O.B.E., County Coroner and President of the Preston Incorporated Law Society, and Mr. J. C. O. Dickson, D.F.C., lately President of the Preston Incorporated Law Society. Responding to the toast of "The Society," Mr. Dewhurst mentioned that it was founded in October, 1787, as the Preston Legulean Society, and is believed to be the oldest of its kind in the country. Outstanding founder members included Sir William Atherton, who became Attorney-General; Thomas Batty Addison, later Recorder of Preston and Chairman of Quarter Sessions; his brother, John Addison, twice Mayor of Preston; Robert Segar, county court judge; Thomas Starkie Shuttleworth, Clerk of the Peace for the county; Richard Palmer, Town Clerk of Preston for more than fifty years; and Nicholas Grimshaw, seven times Mayor of Preston, twice Guild Mayor, Town Clerk in 1793, magistrates' clerk for forty years and Commander of the Preston Volunteers in 1797.

SOLICITORS BENEVOLENT ASSOCIATION

At the monthly meeting of the board of directors held on 5th April, 1950, twenty-one solicitors were admitted to membership of the Association, bringing the total membership up to 7,534. A sum of £3,846 11s. was distributed in relief to thirty-seven beneficiaries; of this sum £121 was in respect of special grants for convalescence, clothes, etc. All solicitors on the roll for England and Wales are eligible for membership of the Association. Further information may be obtained by writing to the Secretary at 12 Clifford's Inn, Fleet Street, London, E.C.4. The minimum annual subscription is £1 1s.; life membership subscription £10 10s.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

The Housing Act, 1949

Sir,—I was extremely interested in your article on the Housing Act, 1949, in the issue of 8th April. Two points on this Act have bothered me for some time, though fortunately I have not, as yet, had to advise on either. The first point is still not clear to me, though the second I have solved, as I hope to show.

I have in mind a house converted from, say, old stables, so that the building was never previously a dwelling-house. Assuming that the work was done under the Act, the maximum rent would be fixed under s. 22. Is it then possible to allow such a house to be occupied by someone other than a tenant, e.g., a servant who is obliged to occupy it under the terms of his employment agreement, and so exclude the Rent Acts? Section 30 would not be applicable to such a case, but does the wording of s. 23 (1) (*b*) mean that the house must always be "let or available for letting," or do those words merely refer to the rent at which it must be let when (if ever) it is let, without imposing an obligation to let it? It is notable that the same sub-paragraph, and also the following one, uses the word "occupier" and not "tenant."

The second point which worried me until I took the trouble to look it up was whether a tenant could appeal under s. 1 of the Landlord and Tenant (Rent Control) Act, 1949, against a rent fixed by s. 22 of the Housing Act (which in the case of a house converted as above from old outbuildings, etc., would be the standard rent) and apply for it to be reduced. However, on investigating the Landlord and Tenant (Rent Control) Act, s. 1 (7) (*b*), I see that the tenant could not do so.

Monmouth. H. R. P. LLOYD.

[The object of Pt. II of the Act appears to be relief of the housing shortage, by means, partly, of Exchequer contributions, and I think that the assumption underlies ss. 22–24 that for some time to come the number of people in need of housing will exceed the number of houses available and the number able to buy houses will be less than the number able to take tenancies at reasonable rents. The "shall . . . be let or be kept available for letting at a rent not exceeding the maximum rent that", etc., in s. 23 (1) (*b*) must, I consider, mean that the owner must, in the circumstances defined, both keep the house in the letting market and reserve no more than the permitted rent. This conclusion is strengthened by consideration of the qualifying words: "at all times at which is not occupied by the applicant for the improvement grant or a member of his family or a person to whom the interest of the applicant in the dwelling has been devised by him." (It is astonishing, incidentally, that, having regard to the anomalies disclosed by *Thynne* v. *Salmon* (1948), 92 SOL. J. 83, and its satellites, those who claim under an intestacy are left out!) As to the case of the servant visualised by your correspondent, I agree that a nice question might arise whether in some particular case in which reference would be made, among many other authorities, to *R.* v. *Stock* (1810), 2 Taunt. 339, and *Bertie* v. *Beaumont* (1812), 16 East 33, the owner was or was not still occupying the dwelling.

I agree, of course, with the conclusion reached on the other point.—R. B.]

BOOKS RECEIVED

The Trials of Frederick Nodder. Edited by WINIFRED DUKE. 1950. pp. xiii and 242. London: William Hodge & Co., Ltd. 15s. net.

Emmet's Notes on Perusing Titles and on Practical Conveyancing—Vol. 2. Thirteenth Edition in Two Volumes. By J. GILCHRIST SMITH, LL.M., Solicitor (Hons.). 1950. pp. cxxviii and (with Index) 750. London: The Solicitors' Law Stationery Society, Ltd. 60s. net.

Oyez Practice Notes, No. 1: Change of Name. By J. F. JOSLING. Third Edition. 1950. pp. 34. London: The Solicitors' Law Stationery Society, Ltd. 2s. 6d. net.

The Cambridge Law Journal. Vol. 10, No. 3. 1950. London: Stevens & Sons, Ltd. 6s. net.

The International Law Quarterly. Vol. 3, No. 2. April, 1950. London: Stevens & Sons, Ltd. 10s. net.

The Law of Quasi-Contracts. By JOHN H. MUNKMAN, LL.B., of the Middle Temple and the North-Eastern Circuit, Barrister-at-Law. 1950. pp. xiv and (with Index) 104. London: Sir Isaac Pitman & Sons, Ltd. 20s. net.

The Hearsay Rule. By R. W. BAKER, B.C.L., B.Litt., LL.B., Professor of Law in the University of Tasmania. 1950. pp. xxi and (with Index) 180. London: Sir Isaac Pitman and Sons, Ltd. 30s. net.

For Them that Are Yet to Come. By L. GRAHAM H. HORTON-SMITH, F.S.A. (Scot.), M.A., Sometime Fellow of St. John's College, Cambridge, and of the Hon. Society of Lincoln's Inn, Barrister-at-Law. 1950. pp. 32. St. Albans: The Campfield Press. 7s. 6d. net.

The Conveyancer and Property Lawyer. Vol. 13 (New Series). Edited by DONALD C. L. CREE, M.A., of Lincoln's Inn, Barrister-at-Law, and HAROLD POTTER, LL.D., of Gray's Inn, Barrister-at-Law. 1949. pp. xi and (with Index to Vols. 11, 12 and 13) 626. London: Sweet & Maxwell, Ltd.

Cost Control in the Boot and Shoe Industry. By RUSSELL J. CLARK, F.I.C.W.A., A.M.I.I.A. 1950. pp. 77. London: Gee & Co. (Publishers), Ltd. 12s. 6d. net.

Pollock's Principles of Contract. Thirteenth Edition. By Sir PERCY H. WINFIELD, K.C., F.B.A., LL.D., Hon. Bencher of the Inner Temple. 1950. pp. xliii and (with Index) 610. London: Stevens & Sons, Ltd. 40s. net.

The Law of Mortgages. By C. HUMPHREY MEREDITH WALDOCK, C.M.G., O.B.E., B.C.L., M.A., of Gray's Inn, Barrister-at-Law. Second Edition. 1950. pp. xxix and (with Index) 451. London: Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd. 35s. net.

The Law of Rent Restriction in Ireland. By JOHN R. COGHLAN, B.A., LL.B., T.C.D., Barrister-at-Law. With a Foreword by the Hon. Mr. Justice WILLIAM BLOCK. Second Edition. 1950. pp. xxxiv and (with Index) 250. Dublin: Dollard Printing-house, Dublin, Ltd. 27s. net.

Town and Country Planning. Vol. 18, No. 72. April, 1950. London: The Town and Country Planning Association. 1s. 6d. net.

Revue Hellénique de Droit International. Vol. 2, No. 1. January-March, 1949. Athens: C. Cacoulides.

National Insurance (Industrial Injuries). By DOUGLAS POTTER, M.A., of the Inner Temple and South-Eastern Circuit, Barrister-at-Law, and D. H. STANSFIELD, B.A., of Lincoln's Inn and the Western Circuit, Barrister-at-Law. Second Edition. 1950. pp. xix and (with Index) 392. London: Butterworth & Co. (Publishers), Ltd. 21s. net.

Michael and Will on the Law relating to Water. Ninth Edition. By H. R. MCDOWELL, LL.B., Solicitor and Parliamentary Officer to the Metropolitan Water Board, and C. F. CHAMBERLAIN, of the Middle Temple, Barrister-at-Law. 1950. pp. cvii, 785 and (Index) 82. London: Butterworth & Co. (Publishers), Ltd. £6 6s. net.

Learning the Law. By GLANVILLE L. WILLIAMS, LL.D. (Cantab.), Professor of Public Law in the University of London, of the Middle Temple, Barrister-at-Law. Third Edition. 1950. pp. xiv and 192. London: Stevens & Sons, Ltd. 12s. 6d. net.

The Double Taxation Conventions. Supplement to Vol. 1—Taxation of Income. By F. E. KOCH, A.A.C.C.A., A.C.W.A. 1950. pp. xv and (with Index) 185. London: Stevens & Sons, Ltd. 25s. net.

The Stock Exchange Official Year-Book, 1950, Vol. 1. Editor-in-Chief: Sir HEWITT SKINNER, Bt. 1950. pp. (with Index) cxlvi and 1,541. London: Thomas Skinner & Co. (Publishers), Ltd. £6 net (2 Vols. complete).

NOTES OF CASES

COURT OF APPEAL

PROCEDURE: SERVICE OUT OF JURISDICTION

Korner *v.* Witkowitzer

Bucknill, Singleton and Denning, L.JJ. 3rd February, 1950

Appeal from Slade, J., in chambers.

The plaintiff had held office with the defendants, a Czechoslovakian concern now nationalised. By the writ in this action he claimed money which he alleged to be due (*a*) under a pension agreement, and (*b*) under a service agreement. He also claimed damages for breach of contract. He contended that both pension and salary were, in the events which had happened, payable to him in London, that their non-payment was a breach of contract, and that the breaches had taken place within the jurisdiction of the court, namely, in London.

The defendants applied to have the writ set aside. The master granted the application, and the plaintiff appealed.

Slade, J., held that in the case of both agreements the plaintiff had established a *prima facie* case (1) that there was a contract at the date of the issue of the writ and also (2) that there had been breaches of the contracts, those being matters to be decided at the trial. On the issue whether the breaches were committed within the jurisdiction the standard of proof was different: he must on that issue be satisfied that the breaches had occurred within the jurisdiction before he could grant leave for notice of the writ to be served out of the jurisdiction. The plaintiff must prove that on the application, and he had failed to do so. He therefore affirmed the master's order. The plaintiff now appealed. (*Cur. adv. vult.*)

BUCKNILL, L.J., referred to *Fowler* v. *Barstow* (1881), 20 Ch. D. 240; *Thomas* v. *Hamilton* (*Dowager Duchess*) (1886), 17 Q.B.D. 592; *Badische, etc., Fabrik* v. *Chemische Fabrik, etc.* (1903), 88 L.T. 490, and (1904), 90 L.T. 733; and *Tyne Commissioners* v. *Armement Anversois S/A* [1949] A.C. 326, and said that, if the observations of Lord Goddard, C.J., in *Malik* v. *Narodni Bank* [1946] 2 All E.R. 663 had the meaning attributed to them by Slade, J., which he doubted, they were *obiter* since they were not necessary for the decision of the court. If the observations had that meaning and were not *obiter*, in his view they laid down a rule of construction of R.S.C., Ord. 11, r. 4, inconsistent with the decisions cited. No special standard of proof required that the judge must be *satisfied* that there had been a breach of contract within the jurisdiction before he would allow service of notice of the writ outside the jurisdiction. There was *prima facie* evidence of the necessary matters, and leave should in his opinion have been given to serve the writ out of the jurisdiction.

SINGLETON, L.J., said that he agreed with Slade, J., on the question of standard of proof, but disagreed with his view that the plaintiff had failed to establish that the breaches had been committed in this country. He therefore agreed that the appeal should be allowed.

DENNING, L.J., said that he, like Singleton, L.J., agreed with Slade, J.'s view as to the standard of proof. Unlike his brother, however, he also agreed with Slade, J.'s finding that the breaches in this country were not established. He (Denning, L.J.) would accordingly dismiss the appeal. Appeal allowed.

APPEARANCES: *Sir Andrew Clark*, K.C., and *Gahan* (*Rubinstein, Nash & Co.*); *Clive Burt* (*Blyth, Dutton, Wright and Bennett*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PUBLIC CONVENIENCE: INVITEE OR LICENSEE

Pearson *v.* Lambeth Borough Council

Cohen and Asquith, L.JJ., and Roxburgh, J. 1st March, 1950

Appeal from Lambeth County Court.

As the plaintiff was leaving a public convenience, which he had used without payment, by a staircase running up to street level, he was injured by striking his head against part of a grille which, when drawn forward, barred access to the convenience. It had been drawn a little forward from its usual retracted and harmless position by an unknown person. The county court judge found that the grille had been pulled forward by mischievous children who had been in the habit of tampering with it and had been seen swinging on it shortly before the accident. He held that the plaintiff was a licensee in the convenience, that a licensor was only liable for "traps" or hidden dangers of which he actually knew, and that the borough council had no actual knowledge of the danger which caused the plaintiff's injuries. The plaintiff appealed. (*Cur. adv. vult.*)

ASQUITH, L.J., reading the judgment of the court, said that a licensor was only liable to a licensee for injuries caused by hidden dangers of which the licensor actually knew. What was precisely meant by "actually knowing of a danger" was by no means as easy a question as it sounded. The meanings of the words "know" and "danger" in that connection were both surprisingly elusive. But the court were satisfied that a licensor was not liable for dangers of which he did not actually know but of which he ought to know, in the sense in which the words "ought to know" were used in *Indermaur* v. *Dames* (1866), L.R. 1 C.P. 274; otherwise there would be no difference between the liabilities of an invitor and of a licensor. The court thought that, in the sense properly attributable to the words, the borough council here, having regard to the known acts of children in the past in connection with the grille, "actually knew of the danger." The principle in *Coates* v. *Rawtenstall Corporation* (1937), 157 L.T. 415, was applicable. The plaintiff therefore did not need to rely on the word "ought." As he was entitled to succeed as a licensee, the court had not to decide the question whether he was an invitee. In their opinion, on the authorities he was a licensee. Apart from authority they would have been inclined to hold him an invitee. Appeal allowed. Judgment for the plaintiff for £66 5s. Leave to appeal to the House of Lords.

APPEARANCES: *S. Terrell* (*Victor Mishcon*); *Dennis Thompson* (*The Town Clerk*, Lambeth).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

ESTATE AGENT: COMMISSION

Fowler *v.* Bratt

Eversheed, M.R., Denning and Jenkins, L.JJ. 1st March, 1950

Appeal from Cardiff County Court.

The plaintiff, an estate agent, received instructions from the defendant to "find a purchaser" for his house. The defendant agreed to pay commission at 2½ per cent. The agent, with the approval of the defendant, wrote to a prospective purchaser whom he had found, saying that the defendant had agreed to the purchaser's verbal offer of £2,850; that the defendant suggested possession in two months but was prepared to discuss that matter; and that a deposit of £280 should be paid. The purchaser replied simply "Please find enclosed cheque value £280, being deposit on the above property." The defendant subsequently declined to go through with the sale. The county court judge, in the agent's action, held the commission payable because a contract had been entered into which merely required implementation and the drawing up of formal documents of title. The defendant appealed.

EVERSHED, M.R., said that the contract was that the plaintiff (agent) would find a purchaser, which meant that he would produce a purchaser bound in law to buy, see *per* Lord Russell and Lord Romer in *Luxor* (*Eastbourne*), *Ltd.* v. *Cooper* [1941] A.C. 108, at pp. 126 and 154, a view followed in subsequent cases. Whether a binding agreement had been effected turned on the letter written by the plaintiff with the defendant's approval and the purchaser's reply enclosing a cheque for the deposit. The whole question was whether those two

documents could be looked at together, and, if so, whether they effected a binding contract within s. 40 of the Law of Property Act, 1925. Having regard to *Long* v. *Millar* (1879), 4 C.P.D. 450, which was analysed by Russell, J., in *Stokes* v. *Whicher* [1920] 1 Ch. 411, he had come to the conclusion that the letter sending the deposit could be connected with the previous letter and that the two letters together constituted a binding contract of sale. The agent was accordingly entitled to commission.

DENNING and JENKINS, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *D. Pennant* (*Myer Cohen & Co.*, Cardiff); *Meurig Evans* (*Phœnix & Walters*, Cardiff).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

ESTATE AGENT: COMMISSION

Dennis Reed, Ltd. *v.* Goody and Another

Bucknill and Denning, L.JJ., and Hodson, J.
4th April, 1950

Appeal from Maidstone County Court.

The defendants, a husband and wife, wishing to sell their house, served a document addressed to the plaintiffs, a company of estate agents, stating: "I hereby instruct you to find a person ready, able and willing to purchase the above property for the sum of £2,825 or such other price to which I shall assent. Upon your introducing such a person I will pay you commission in accordance with" a scale set out. The agents introduced a potential purchaser who, after having been assured by the vendors that there was no road charge in respect of the unadopted road giving access to the house, and after a price of £2,750 had been agreed, signed an agreement in printed form to buy the house at that figure. That agreement contained the following typewritten clause: "It is clearly understood that the purchaser is purchasing on the understanding that the road charges are paid, or if not, the vendor will indemnify him against road charges which may be outstanding." The vendors, on the advice of their solicitor, refused to sign that document, but the wife subsequently told the purchaser that her husband would sign it. The draft contract of sale sent to the purchaser for signature did not contain the clause about road charges. The purchaser refused to sign the contract because of that omission, and, while the question was under discussion between the parties' solicitors, wrote to his solicitors withdrawing from the proposed transaction. A few days later the defendant husband wrote to the purchaser that his wife had been correct in stating that an indemnity with regard to road charges would be given, his solicitors having previously similarly informed the purchaser's solicitors. The purchaser maintained his refusal to go on with the matter, and the agents claimed commission from the defendants in respect of the lost sale. The county court judge dismissed the action, and the estate agents appealed. (*Cur. adv. vult.*)

BUCKNILL, L.J., said that, on the true construction of the contract of agency, the words "upon your introducing" had a causal and not a temporal meaning. It was accordingly not sufficient that the person introduced by the agents should have been merely at some time ready, able and willing to purchase the property. The words meant a person ready, able and willing to purchase when the time came for completion. Therefore, as the purchaser had ceased to be ready, able and willing before completion, the agents never became entitled to commission under the contract. In his (his lordship's) view, the offer to purchase was in effect an unqualified offer to buy the house on terms which the vendors were willing to accept, since the clause as to road charges incorporated in substance the result of conversations between the purchaser and the vendors. The contract of agency was so drafted as to be intended to give the agents a claim to commission in circumstances falling short of the execution of a contract of sale enforceable by vendors and purchaser; and if, after the purchaser had signed the offer to purchase the house, it had been the vendor, and not the purchaser, who refused to go through with the transaction commission would have been payable to the agents.

DENNING, L.J., agreed with Bucknill, L.J.'s construction of the word "upon" in the contract of agency. When a house-owner put his house into the hands of an estate agent, the ordinary understanding was that the agent was only to receive a commission if he succeeded in effecting a sale, and that if he did not succeed he was entitled to nothing. Once there was a binding contract of sale the vendor undoubtedly could not withdraw from it except at the risk of having to pay the agent his commission; but that did not mean that commission was payable as soon as a contract was signed. When no binding contract had been made, the vendor could withdraw at any time without being liable for commission, for the agent was not paid, as a labourer was paid, for work done, and accordingly was not entitled to commission if the negotiations broke down even though he had done his part. If an estate agent wished to receive commission on offers only, such a stipulation, being contrary to the ordinary understanding in such matters, should be called specifically to his principal's attention. He, unlike Bucknill, L.J., but in agreement with Hodson, J., thought that the agreement to purchase was qualified.

HODSON, J., said that in his opinion the qualification as to road charges was sufficient to take the purchaser out of the category of willingness notwithstanding that the vendor had stated that there were no road charges outstanding. The vendors, through no fault of their own, gained no benefit from the contract of agency since it was the purchaser who withdrew. It would be surprising if a contract should be so drawn as to make them liable to commission in such an event. That contract should be construed against the agents on the principle *contra proferentem*. Appeal dismissed.

APPEARANCES: *Barry*, K.C., and *H. E. Francis* (*Hardcastle Sanders & Co.*); *Ungoed-Thomas*, K.C., and *Neligan* (*Cameron, Kemm & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

FACTORY: UNFENCED MACHINE: UNEXPLAINED DEATH OF WORKMAN

Smethwick *v.* National Coal Board

Tucker, Somervell and Denning, L.JJ. 20th April, 1950

Appeal from Mr. Commissioner Gentle, K.C., sitting at Glamorgan Assizes.

The plaintiff as widow and administratrix claimed damages from the defendants in respect of the death of her husband, who had been employed by them. The workman had been working at the screens of the colliery in proximity to the jockey roller and belting on the screens. He was found lying dead with a broken arm and other injuries, but the cause of his death remained unknown. The commissioner gave judgment for the plaintiff for £2,726 18s. 6d. and the board now appealed. It was contended on their behalf that some causal connection must be shown between the injury and the breach of statutory duty, and that here, even if it were held that the machinery was dangerous and exposed, the claim could not succeed because the plaintiff had not shown any causal connection between the workman's death and the state of the machinery. It was contended for the plaintiff that the inference that the unfenced machinery had played some part in causing the death was irresistible.

TUCKER, L.J., said that the main defence was that the plaintiff had not discharged the burden of showing that the unfenced state of the machinery could reasonably be inferred to have caused the accident. Nobody knew what the deceased had been doing, or could account for his injuries; but it was not necessary for the plaintiff to establish exactly what had happened. On the evidence the only possible inference was that the deceased met his death by contact with the unfenced machinery. Section 55 of the Coal Mines Act, 1911, provided that every flywheel and all exposed and

dangerous parts of the machinery used in or about the mine should be kept securely fenced. The test to be applied in deciding whether machinery was dangerous had been laid down in *Hindle* v. *Birtwistle* [1897] 1 Q.B. 192, and was correctly stated in Redgrave on the Factories Act, 17th ed., pp. 33–34. Though, applying the test of foreseeability, the present case was near the line, he thought that in the circumstances the machinery could properly be described as exposed and dangerous. The board had failed to prove contributory negligence, and the appeal must fail.

SOMERVELL and DENNING, L.JJ., delivered concurring judgments.

APPEARANCES: *Glyn-Jones*, K.C., and *G. O. George* (*R. S. S. Allen*, for *W. H. F. Barklam*, Cardiff); *Edmund Davies*, K.C., and *Alun Davies* (*Theodore Goddard & Co.*, for *Morgan, Bruce and Nicholas*, Pontypridd).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

"FACTORY": TRAMWAY DEPOT

Griffin *v.* London Transport Executive

Lord Goddard, C.J. 3rd March, 1950

Action.

The plaintiff was employed by the defendant board as an electrician at a tramway depot. Part of the depot consisted of a repair shop for substantial repairs to tramcars. The remaining part consisted of a shed where tramcars were housed at night; but repairs were also carried out there, in particular to tramcars that had been involved in collisions. The repair shop and the shed were entirely separated from each other by a dividing wall. While the cleaning of a gangway in the shed was taking place by a process which gave off heavy smoke, the plaintiff passed along the gangway and, blinded by the smoke, fell into an inspection pit, receiving the injuries for which he brought this action. He claimed damages for breach of the board's statutory duty to fence securely "all openings in floors" (s. 25 (3) of the Factories Act, 1937). By s. 151 (6), "factory" includes "any premises in which the construction, reconstruction or repair of . . . vehicles . . . is carried on as ancillary to a transport undertaking . . . not being any premises used for the purpose of housing locomotives or vehicles where only cleaning, washing, running repairs or minor adjustments are carried out."

LORD GODDARD, C.J., considering the question whether the shed where the accident took place was a "factory" within s. 151 (6), said that in his opinion the repair shop was a separate entity from the shed. In the shed, however, repairs were carried out when tramcars were brought in after a collision. It was impossible to say that that was a place where mere running repairs were carried out. Running repairs were the repairing of defects which arose in a vehicle in the course of its ordinary running. Minor adjustments, for example, were the tightening up of nuts that had worked loose, or the mending of fuses. He therefore found as a fact that the shed came within the definition of a factory. As for s. 25 (3), in his opinion, the pits which protruded across the gangway constituted "openings" in the floor, and there was no rail or protection of any sort round them. The plaintiff, however, had been negligent in passing through the smoke while it was obscuring the floor of the gangway. The blame must be apportioned as to three-fifths to the plaintiff and as to two-fifths to the defendant board. Judgment for the plaintiff for £182 (two-fifths of £455).

APPEARANCES: *Jukes* (*Rowley, Ashworth & Co.*); *Beresford*, K.C., and *Paterson* (*A. H. Grainger*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

WATER UNDERTAKERS: SUPPLY OF WATER TO HOUSE-BOAT

West Mersea Urban District Council *v.* Fraser

Lord Goddard, C.J., Morris and Finnemore, J.J. 18th April, 1950

Case stated by Essex justices.

The appellant local authority were convicted of contravening s. 120 of the Public Health Act, 1936, as amended by Sched. IV to the Water Act, 1945, in making default, as the water undertakers, on and from 2nd September, 1949, in furnishing a supply of water for domestic purposes to premises consisting of a house-boat, the property of the prosecutor. The prosecutor, having complied with the provisions of Pt. X of Sched. III to the Act of 1945, demanded a supply of water to the house-boat, and the authority refused it, contending that the boat did not constitute premises for the purposes of s. 30 (1) of Pt. VII of Sched. III. The boat was berthed on saltings to the owner of which the prosecutor paid £20 a year. No particular site on the saltings was stipulated. The boat normally floated at high tide. It had shifted 20 yards up the creek in a recent gale. The justices held the authority in default and convicted them. They now appealed.

LORD GODDARD, C.J., said that the justices' decision that the house-boat came within the meaning of the word "premises" in the Water Act, 1945, was partly one of law and partly one of fact. The word "premises" was not a term of art, and in the Act it meant some form of property used as domestic premises. Before the authority could be required to provide water to particular premises there must be a site with some degree of permanency. This house-boat had lain in the creek since 1944. The fact that the prosecutor had not stipulated with regard to the precise site which the boat was to occupy was not conclusive. She selected the place in the creek where the boat was to be, and she must have moored it, or it would be shifted every time the tide rose. It obviously occupied the site where it was moored, and there was, therefore, that degree of permanency. The legal point appeared to be that, before the boat could be premises, there must be an element of permanency in the site. The fact that in a recent gale it moved some 20 yards up stream did not destroy the element of permanency. The justices were right and the appeal failed.

MORRIS and FINNEMORE, J.J., gave concurring judgments. Appeal dismissed.

APPEARANCES: *Hines* (*Adam Burn & Son* for *John Fowler, Oldman & Co.*, Colchester); *Garland* (*Bishop and Cooke*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:—

Land Drainage (Surrey County Council (Hogsmill River Improvement) (Amendment)) Provisional Order Bill [H.C.] [20th April.

Read Second Time:—

Army and Air Force (Annual) Bill [H.C.] [19th April.

Colonial and Other Territories (Divorce Jurisdiction) Bill [H.L.] [18th April.

Diplomatic Privileges (Extension) Bill [H.C.] [20th April.

High Court and County Court Judges Bill [H.L.] [18th April.

Medical Bill [H.L.] [18th April.

Read Third Time:—

City of London (Various Powers) Bill [H.L.] [18th April.

Dundee Corporation (Administration and General Powers) Order Confirmation Bill [H.C.] [19th April.

Post Office and Telegraph (Money) Bill [H.C.] [20th April.

Wakefield Extension Bill [H.L.] [18th April.

In Committee:—

Maintenance Orders Bill [H.L.] [20th April.

B. Debates

On the Second Reading of the **High Court and County Court Judges Bill,** the Lord Chancellor said there were other judicial matters which might be dealt with on some future occasion, but this Bill dealt with only one matter, namely, the *number* of the judges.

The existing law limited the number of puisne judges of the High Court to thirty-three. The Bill would increase that maximum by six, but the Lord Chancellor would decide the actual number of judges required from time to time, with the concurrence of the Treasury, having regard to the state of business in the High Court as a whole. He was of the opinion that the Chancery Division had sufficient, but not more than sufficient, strength to cope with its present business, having regard to the fact that the Revenue Paper had recently been transferred to Chancery judges. Neither did he propose to alter the number of judges attached to the Probate, Divorce and Admiralty Division.

With regard to the King's Bench Division, the Evershed Committee had reported that whereas in 1871 for a population of 22,000,000 there were eighteen King's Bench judges, in 1948 for a population of 43,500,000 there were twenty. Moreover, the Court of Criminal Appeal had been set up in 1907, and that took three judges away. Civil work had increased since pre-war. In 1937 the number of cases standing for trial at the beginning of the Easter law sittings was 665; in 1950 it was 1,215. There had also been a large increase in crime.

To deal with this situation he and the Lord Chief Justice working together had had to appoint a number of commissioners of assize, but he was in full agreement with the findings of the Evershed Committee that it was undesirable to appoint commissioners as a regular means of supplementing judicial strength. The only proper remedy was—more judges. Two more were required immediately, and perhaps, to avoid the regular appointment of commissioners of assize, a further two judges would be necessary. The Evershed Committee had also recommended the introduction of a system of fixing days for trial. If that recommendation were ever accepted a further reserve of judicial power would be needed, and so that such a laudable reform should not be held up for lack of the necessary power to appoint new judges, power had been taken in the Bill to appoint a further two judges, making six in all. He had said nothing of the Legal Aid and Advice Act, but it would obviously have a considerable effect in increasing the volume of judicial work.

The judges had cut down their Long Vacation and were sitting longer hours, but he did not believe long hours were desirable for either judges or juries. It was impossible to apply the mind to a case at full pressure for very long periods of time.

Coming to the county courts, Viscount Jowitt said the present maximum number of judges was sixty. The work of these courts had also greatly increased and resort had been had to the frequent appointment of deputy judges. The Austin Jones Committee had deprecated this practice, and he agreed. The Bill would give power to appoint five new county court judges, but only two would be appointed at first, and those in the London area.

Lord Goddard welcomed the Bill, but thought that the appointment of only two new King's Bench judges would make little difference if the system of sending commissioners on circuit were to be discontinued. If there were four new judges he visualised that they would be used thus: One extra judge would always have to be sent to Lancashire, though he might not always have to go to Liverpool; there would probably, at least for the time being, have to be a third judge in the Manchester area; he had always had to ask the Lord Chancellor to send a commissioner into the West Riding, which would mean that one new judge would go there; this accounted for three out of the four new judges. Those of the new judges who were in London would have to hold themselves in readiness to go wherever a commissioner was required—and at the same time additional help would be wanted in London.

He considered that four new judges was the minimum required. If only two were appointed, commissioners would still have to be sent. Even if four were appointed, it would still leave London at some disadvantage as compared with the provinces.

Lord Llewellin said that, though commissioners did their work admirably, they did not look like judges of the High Court—they did not impress people in the same way and did not sit in the same robes. Therefore the person who had had his case heard by a commissioner felt that he had come off second best, because it was a substitute and not the judge himself who had tried the case. He hoped it would be possible some time to establish the system of fixing days for trial. He believed that a great deal more money was wasted by witnesses and important executives hanging about for their case to be heard than would be involved in paying the salaries of two extra judges for this purpose. He would like to know whether it was proposed to appoint the full five of the new county court judges and, if so, whether this would mean an alteration in some of the county court circuits. Lord Roche felt that the powers given under the Bill should be exercised with extreme caution. The judges enjoyed high prestige, but a small body of men could not be indefinitely diluted in quantity without some sacrifice in quality.

In replying to the debate, the Lord Chancellor said he did not think there was any danger of having to sacrifice the quality of the judges even if he had to appoint the full six. He would certainly bear in mind in his discussions with the Treasury Lord Goddard's view that four new judges should be appointed at once. [18th April.

In the Committee Stage of the **Maintenance Orders Bill** the Lord Chancellor moved a new subsection to the clause giving to a summary or a sheriff court in which a maintenance order has been registered for enforcement under Pt. II of the Bill power to vary the amount payable under the order. The Bill subjected this power to the restriction that no such variation should impose on the person liable to make the payments a liability to make payments in excess of the maximum rate, if any, authorised by the law for the time being in force in the part of the United Kingdom in which the order was made. In Scotland there were no *maxima*, but there were in both England and Northern Ireland. The proposed new subsection would enable the court in which the order had been registered, and which was making a variation, to take judicial notice of the maximum rates. This would overcome the difficulty that as the *maxima* were matters of foreign law they would otherwise have to be proved by expert witnesses. [20th April.

C. Questions

The Lord Chancellor stated that all the provisions of the Criminal Justice Act, 1948, with one exception, had now been brought into force. The exception was the repeal, in Pt. I of Sched. X, of certain portions of s. 12 (5) of the Criminal Justice Act, 1925. This repeal would be inconsistent with the amendment made in the same subsection by Sched. IX. No remand centres, detention centres or attendance centres had yet been set up under the Act, but plans had been made with the co-operation of the local justices, police and local authorities for three attendance centres to be set up at Peel House, London, at Smethwick and at Hull. The necessary rules for the conduct of these centres would come into force shortly and it was hoped that the three centres would be opened in June. [18th April.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Highways (Provision of Cattle-Grids) Bill [H.C.] [19th April.

To provide for cattle-grids in highways, and for purposes connected therewith.

Read Second Time :—

Bury Extension Bill [H.C.] [19th April.

B. Questions

Town and Country Planning

Mr. Dalton said that 300 out of 100,083 forms L.39 had been sent out in error by the Central Land Board to owners of single dwelling-houses to ascertain whether their claims to compensation were admissible. The information given on the forms sent in error would not in any way be used to the claimants' disadvantage. He had no evidence to the effect that people felt that they were being compelled to make a valuation which they chose not to make on Form S.I., and thereby forfeited the contribution to their professional fees. [18th April.

Mr. Dalton said that he did not propose to set up any committee to investigate complaints against the operation of the development charge under the Town and Country Planning Act. He had, however, asked the Chairman of the Central Land Board to report to him on possible administrative improvements. Any person who felt aggrieved at the operation of the

development charge should get into touch with his Member of Parliament. [18th April.

Mr. MIDDLETON asked the Minister of Town and Country Planning whether he was aware that land was being offered for development purposes at prices far in excess of its existing use value, and whether he would inquire into the matter to see what could be done, and inquire particularly to see whether local authorities could give help by purchasing land by compulsory acquisition where development was necessary. Mr. DALTON said he was very anxious that there should be no exploitation through charges being made in excess of use value. He had the matter very much in mind and a number of cases were under study now. [18th April.

Mr. DALTON stated that he had received a deputation from a number of local authorities asking that they be permitted to use their own valuer and not, as at present, be compelled, as a condition of grant, to use the services of the district valuer in connection with the acquisition of land under the Town and Country Planning Act. There would be a debate on this matter shortly. [18th April.

In reply to Mr. BRAINE, Mr. DALTON said that freehold property would not be acquired by new town development corporations until needed for actual development, but when acquisition did take place he could not undertake to provide freeholders with an equivalent freehold plot in exchange. [18th April.

Mr. DOUGLAS JAY, Financial Secretary to the Treasury, stated that Parliament had decided, in considering the Town and Country Planning Act, 1947, that public authorities, in acquiring property compulsorily, should not be compelled to pay inflated prices attributable to vacant possession, and he would not therefore take any action to secure for the owners a payment for value attributable to vacant possession. [18th April.

Captain SOAMES asked the Chancellor of the Exchequer whether he would take steps, by regulation, to authorise the Central Land Board further to extend to cases where planning permission had been refused, and particularly to cases where such permission had been refused on the ground that plots were too close to some trunk roads, the arrangements for a single house plot owner to set off the development charge which would be payable on a house built on another site against his claim on the £300m. fund for loss of development values. Sir STAFFORD CRIPPS replied that Mr. Dalton had asked the Central Land Board to review generally the working of Pts. I to III of the Town and Country Planning Act, 1947. He regretted that he could not consider Captain Soames' suggestion until the Board's recommendations had been received. [18th April.

LEGAL AID AND ADVICE ACT

The ATTORNEY-GENERAL stated that it was hoped to bring into force on 1st October that part of the Legal Aid and Advice Act which had not been deferred, and before that date the public would be provided with full information as to how to apply for legal assistance in the classes of litigation which the provisions of the Act would then cover. A person wishing to sue the Crown would apply for legal assistance in exactly the same way as a person wishing to take or defend or be a party to any other proceedings. [18th April.

STATUTORY INSTRUMENTS

Air Navigation (General) (Amendment) Regulations, 1950. (S.I. 1950 No. 569.)

Air Navigation (Radio) (Amendment) Regulations, 1950. (S.I. 1950 No. 570.)

Bacon (Rationing) (Amendment No. 2) Order, 1950. (S.I. 1950 No. 618.)

Bananas (Amendment) Order, 1950. (S.I. 1950 No. 616.)

Bankruptcy Fees (Amendment) Order, 1950. (S.I. 1950 No. 602.)

By this order the Bankruptcy Fees (Amendment) Order, 1932, is revoked and the fees payable in respect of duties performed away from the court office by officers of the court are increased. See also *ante*, p. 260.

Calf Rearing Subsidy (Scotland) Scheme, 1950. (S.I. 1950 No. 609.)

Coffee (Amendment) Order, 1950. (S.I. 1950 No. 617.)

Deprivation of Citizenship Rules, 1950. (S.I. 1950 No. 593.)

These rules state the procedure to be followed by the committee of inquiry to which cases involving deprivation of citizenship of the United Kingdom and Colonies may be referred by the Secretary of State under s. 20 (7) or s. 22 (2) of the British Nationality Act, 1948.

Eggs (Great Britain and Northern Ireland) (Amendment No. 2) Order, 1950. (S.I. 1950 No. 615.)

Fish Sales (Charges) Order, 1948 (Revocation) Order, 1950. (S.I. 1950 No. 564.)

Food Standards (Fish Cakes) Order, 1950. (S.I. 1950 No. 589.)

Justices (Supplemental List) Rules, 1950. (S.I. 1950 No. 594.)

These rules replace the Justices (Supplemental List) Rules, 1941, and give effect to the changes in the law made by the Justices of the Peace Act, 1949.

London Traffic (Prescribed Routes) (No. 6) Regulations, 1950. (S.I. 1950 No. 624.)

Mid-Sussex Joint Water Order, 1950. (S.I. 1950 No. 601.)

National Health Service (Authorisation of Subscriptions) Regulations, 1950. (S.I. 1950 No. 600.)

National Health Service Executive Councils (Variation of Constitution) (Scotland) Order, 1950. (S.I. 1950 No. 610.)

Newcastle-upon-Tyne—Edinburgh Trunk Road (Dalkeith—Edinburgh Section) Order, 1950. (S.I. 1950 No. 599.)

Newsprint (Prices) Order, 1950. (S.I. 1950 No. 605.)

North of Scotland Hydro-Electric Board (Constructional Scheme No. 17) Confirmation Order, 1950. (S.I. 1950 No. 591.)

Nut Kernels (Revocation) Order, 1950. (S.I. 1950 No. 614.)

Paper (Prices) (Amendment No. 2) Order, 1950. (S.I. 1950 No. 607.)

Price Regulation Committee (Amendment) Regulations, 1950. (S.I. 1950 No. 620.)

Road Vehicles Lighting Regulations, 1950. (S.I. 1950 No. 622.)

Road Vehicles Lighting (Special Exemption) (Amendment) Regulations, 1950. (S.I. 1950 No. 623.)

School Meals Premises (Reimbursement of Minister of Works) (Scotland) Regulations, 1950. (S.I. 1950 No. 576.)

Soap (Prices) (Amendment No. 2) Order, 1950. (S.I. 1950 No. 612.)

Soft Drinks (Amendment) Order, 1950. (S.I. 1950 No. 596.)

Stopping up of Highways (Hampshire) (No. 2) Order, 1950. (S.I. 1950 No. 597.)

Stopping up of Highways (North Riding of Yorkshire) (No. 1) Order, 1950. (S.I. 1950 No. 598.)

Sugar (Rationing) (Amendment) Order, 1950. (S.I. 1950 No. 613.)

Supreme Court Fees (Amendment) Order, 1950. (S.I. 1950 No. 590.)

This order alters the fees for stamping photographic copies of documents. See *ante*, p. 244.

Utility Cloth and Utility Household Textiles (Maximum Prices) (Amendment No. 8) Order, 1950. (S.I. 1950 No. 585.)

Waste Paper and Waste Fibrous Materials (Prices and Acquisition) (Revocation) Order, 1950. (S.I. 1950 No. 606.)

Women's and Maids' Nylon Hose (Maximum Prices) Order, 1950. (S.I. 1950 No. 582.)

NOTES AND NEWS

Honours and Appointments

Mr. J. H. M. GREAVES, chief assistant solicitor in the Town Clerk's department, Leicester, has been appointed Town Clerk of Newark-on-Trent.

Mr. J. V. JOLLY, senior assistant solicitor to Leicestershire County Council, is to fly to the Far East next month to take up an appointment as assistant secretary to the municipality of Singapore.

Mr. D. REESON, clerk to Swaffham Urban District Council, has been appointed clerk to Bourne Urban District Council.

Personal Notes

Mr. D. K. Griffith, solicitor, of Falmouth, was married on 1st April to Miss Winifred Ellen Garner, of Falmouth.

Miscellaneous

In The Law Society's Intermediate Examination held on 16th and 17th March, 36 candidates gave notice for the whole examination, of whom 28 passed the law part and 25 the trust accounts and book-keeping part. Of 207 candidates who gave notice for the law part only, 146 passed.

The next General Quarter Sessions of the Peace for the Borough of Walsall will be held at the Guildhall, Walsall, on Thursday, 11th May, 1950, at 10 a.m.

Two more compulsory purchase orders by the Central Land Board, announced on 18th April, bring the total of these orders up to 15, of which ten have been confirmed by the Minister of Town and Country Planning.

THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED

The report of the directors of The Solicitors' Law Stationery Society, Limited, for the year 1949, states that the sales continued to increase and constituted another new record. The profit for the year was also substantially higher and amounted to £91,607. The directors recommend that a dividend of 15 per cent. per annum, less income tax, be paid in respect of the year. A bonus will be payable to the staff under the profit-sharing scheme. They also recommend the provision of £32,175 against estimated liability for income tax and profits tax, the addition of £10,000 to the rebuilding reserve, £5,000 to general reserve, £5,000 to a new taxation equalisation reserve and £1,500 to the provision for women's pensions, and the carrying forward of the sum of £24,556, against £20,749 brought forward from the previous year.

The annual meeting will be held at 88/90 Chancery Lane, W.C.2 (first floor), on Tuesday, 16th May, at 12.30 o'clock.

A report of the proceedings will appear in our issue of 20th May.

CENTRAL LAND BOARD

BUILDER'S NEAR-RIPE LAND

The Central Land Board are anxious that builders' "rations" of near-ripe land should be settled as soon as possible, both in the interests of the builders themselves and in order that no building projects should be avoidably held up.

Delay sometimes occurs if plans or sketches submitted with near-ripe applications are not in sufficiently clear detail to enable the land to be identified with certainty when the Board's assessor visits the site.

It would be helpful if the records, containing details of the building development carried out during the period 1934–1938, are available for the assessor to inspect when he visits the builders' office or that of his professional adviser.

It may also save time in negotiation if builders and their advisers are fully aware of the circumstances under which *developed land* (if otherwise eligible) can be included in a builder's ration.

Developed land can be included if it was—

(*a*) a completely cleared site on 1st July, 1948, or

(*b*) a war damaged site where the appropriate payment was a value payment, or

(*c*) a site which on 1st July, 1948, had no buildings on it other than (i) buildings whose use was wholly subordinate to the existing use of the land, and which would not have been readily marketable apart from the land, as, for instance, a sports pavilion; or (ii) buildings which were not occupied or capable of being occupied on 1st July, 1948, or

(*d*) a site with buildings which in the Board's view is held for redevelopment.

Developed land *cannot* be included in the ration if it was held by the claimant for his own use as, for example, a private garden, or held as part of a building firm's business premises for such purposes as a permanent yard, offices, workshops or garages, or for an extension to any of these.

Finally, the Board emphasise that any builder's near-ripe claim on Form S.1/NR which has not yet been completed and returned should be sent in without delay.

Wills and Bequests

Mr. F. G. Corser, solicitor, of Shrewsbury, left £63,502 (£63,354 net).

The Hon. E. G. Eliot, solicitor, of Bishopsgate, E.C.2, left £25,387.

Mr. H. S. Falconer, formerly Coroner of Chichester, left £32,273 (£27,071 net).

Mr. P. Gilbert, solicitor, of Sheffield, left £8,975 (£7,420 net).

Mr. H. B. Hann, solicitor, of Llanishen, Cardiff, left £27,272 (£25,936 net). He left £250 each to two managing clerks with his firm.

Mr. H. Harrison, solicitor, of Macclesfield, left £23,141 (£20,396 net).

Mr. F. W. Mills, retired solicitor, formerly of Huddersfield, left £10,774 (£6,967 net).

Miss C. Morrison, of Broxbourne, England's first woman solicitor, left £1,851.

Mr. G. H. Newborn, solicitor, of Epworth, left £36,351 (£35,629 net).

Mr. A. E. G. Pritchard, retired solicitor, of St. Leonards-on-Sea, left £86,362.

Mr. J. B. Snell, solicitor, of Tunbridge Wells, left £10,265 (£9,968 net).

Mr. E. Spyer, solicitor and director, of Balcombe, Sussex, left £362,115.

Mr. R. H. T. Symonds-Tayler, retired solicitor, of Holmer, Herefordshire, left £20,633.

Brigadier-General G. Kyffin-Taylor, solicitor, of Liverpool, left £7,269 (£7,055 net).

OBITUARY

MR. J. G. AMAN

Mr. John Godfrey Aman, solicitor, of Freshwater, Isle of Wight, died on 2nd April, aged 58. He was admitted in 1920.

SIR RICHARD ARMSTRONG

Sir Richard Harold Armstrong, formerly Pro-Chancellor of Liverpool University, died on 30th March, aged 75. Admitted in 1896, he was senior partner of Messrs. Alsop, Stevens and Collins Robinson, of Liverpool. He was honorary secretary of the Liverpool Society for the Prevention of Cruelty to Children from 1906 to 1912, honorary secretary of the Liverpool Infirmary for Children from 1913 to 1926, chairman of the Royal Liverpool United Hospital from 1938 to 1948, and chairman of the Liverpool United Hospitals from 1948. The honorary degree of Doctor of Laws was conferred on him by Liverpool University in 1945 and three years later he was knighted.

MR. E. V. BROWN

Mr. Ernest Victor Brown, senior partner of Messrs. Fraser, Brown, White & Pears, solicitors, of Nottingham, died recently, aged 69. He was admitted in 1903.

MR. H. L. DINWIDDY

Mr. Harry Lutwyche Dinwiddy, retired solicitor, of Lincoln's Inn Fields, London, died on 21st April, aged 72. He was admitted in 1900.

MR. F. EUSTACE

Mr. Frederick Eustace, solicitor, of Hull, died on 13th April, aged 70. He was admitted in 1902.

MR. J. GARDNER

Mr. John Gardner, solicitor, of Whitchurch, Salop, formerly of Liverpool, died on 21st April, aged 77. He was admitted in 1895.

PRINCIPAL ARTICLES APPEARING IN VOL. 94

8th to 29th April, 1950

For list of principal articles up to and including 1st April, see, ante, *p. 230*

	PAGE
Animals and Charity	262
"Beneficial Interest in Real Estate" (Conveyancer's Diary)	235
Control: Meaning of "Unlawfully Sub-let" (Landlord and Tenant Notebook)	250
Court's Power to Sanction Unauthorised Dispositions of Trust Property (Conveyancer's Diary)	249
Devolution of Realty upon Death (Conveyancer's Diary)	264
Dustbins and the L.C.C. Appeals Committee	223
Housing Act, 1949 (Landlord and Tenant Notebook)	222
Local Government News	219
Local Land Charges and Additional Enquiries	221, 232, 246
Possession by Wife Again (Landlord and Tenant Notebook)	265
Practical Conveyancing	251
Probate (Costs)	263
Sub-Tenant of Unprotected Tenant (Landlord and Tenant Notebook)	236
Taxation (Costs)	218, 233, 247

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: 88-90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.

Annual Subscription: £3 inclusive (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Tuesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).